

# EXHIBIT “A”



JOSEPH MURE JR. & ASSOCIATES  
26 Court Street • Suite 2810 • Brooklyn, NY 11242

RECEIVED 11-4  
DEC 11 2008



UNITED STATES POSTAGE  
02 1P  
\$000.42  
PITNEY BOWES  
0004555273 DEC 09 2008  
MAILED FROM ZIP CODE 11242

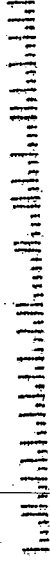
ENY OF  
CORRECTIONAL FACILITY  
Eastern NY

Box 338

Box 338  
Napanochi, New York 12458-0338

Name: Dominick Florio Pin: 00A5699

12458-0338



Dominick Florio  
Din # 00A5699  
Eastern Correctional Facility  
P.O. Box 338  
Napanoch, N.Y. 12458

November 22, 2008

Mr. Joseph Mure'  
26 Court Street  
Brooklyn, N.Y. 11242

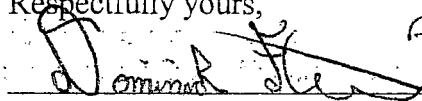
Dear Joseph:

I am writing this letter in regards to my case where you and Charles Ross represented me. This indictment number on this case is New York County Indictment # 6115/99. Joe, I need your assistance in answering some questions for me. I have a pending 440. 10 motion presently in the courts and I raised ineffective assistance of counsel on Charles Ross, not you. You were hired during pre-trial hearings, and never had adequate time to investigate the case at hand, and the judge denied your adjournment you asked for in order to prepare. The questions here are as follow;

1. In what capacity were you hired in my case? - At first your family wanted me to take over the case two days before trial.
2. Did you have adequate time to prepare for my case? I told them that I could not prepare for trial in two days.
3. Did you go over all discovery materials? No, I did not have
4. Did you interview any of the witnesses that testified? No, I did not have
5. What trial strategy did you and Mr. Ross discuss for my defense? No, I did not have
6. Did you ever see any medical records on my behalf by Kings County Hospital or Doctor William Vingiano, Ph.D. Report, that was hired by family? No, I did not have

Just inform me as soon as possible, regarding the above and I thank you for your case & that assistance.

Respectfully yours,

  
Dominick Florio

As to discovery I believe I read the

everything given to me

- ④ I did not interview any witnesses that testified
- ⑤ At first there was no trial strategy then we discussed self-defense
- ⑥ I don't believe any medical records were provided to me

# EXHIBIT “B”

8151

750-7800

1000000000

CO-CURT IMPOSED.

JUDGEMENT ORDER

F. JONES, MATTHEW		335-4100									
JUSTICE	ADJOURNED TO	Date	ADJOURNMENT	Reason For	REMARKS	COURT REPORTER	ENTRIES B)				
HN CATALDO	70	9-21	BY BULLY	BT 2 hours	1010000000	ROBERT P. CONN	1				
OWN CATALDO	82	9-7									
CHARLES SOLIDORI	82	9-15									
CHARLES SOLIDORI	82	10/12	Adenos	Motions	Paul Bond & Associates	ROBERT P. CONN	2 M				
CP	82	12-14	P.D.	G.I. MIN. SUFF.	48 County Notice	ROBERT P. CONN	Cash on 1				
CHARLES SOLIDORI	82	11-4	doc								
CP	82	12-14	P.D.	G.I. MIN. SUFF.							
CHARLES SOLIDORI	82	1-25-2000									
CHARLES SOLIDORI	82	2-9									
CHARLES SOLIDORI	82	2-9									

# 3RD OF COURT ACTION

Form CRC 151.1

Date	Court Action	1	Adj. Request	Present	Absent	Notify	Excused
Part			People	Officer	Officer	Officer	Officer
Reporter			Defense	Complainant	Complainant	Complainant	Complainant
Judge			Consent	Defendant	Defendant	Defendant	Defendant
			Court	Attorney	Attorney	Attorney	Attorney
Reason for Adjournment			<p>FGA 11/4</p>				
Bail Condition			<p>SPEEDY TRIAL</p> <p>Adjournment period to be excluded under 30.30 CPL</p> <p>Adjournment period to be charged under 30.30 CPL</p> <p>The defendant, being without counsel, consents to this adjournment after having been advised of his rights under the Speedy Trial Rules and the effect of his consent.</p> <p>The defendant, upon being released on his own recognizance, was directed by the Court pursuant to Sec. 510.40 of the CPL.</p>				

Date	Court Action	2	Adj. Request	Present	Absent	Notify	Excused
Part			People	Officer	Officer	Officer	Officer
Reporter			Defense	Complainant	Complainant	Complainant	Complainant
Judge			Consent	Defendant	Defendant	Defendant	Defendant
			Court	Attorney	Attorney	Attorney	Attorney
Reason for Adjournment			<p>The product</p>				
Bail Condition			<p>SPEEDY TRIAL</p> <p>Adjournment period to be excluded under 30.30 CPL</p> <p>Adjournment period to be charged under 30.30 CPL</p> <p>The defendant, being without counsel, consents to this adjournment after having been advised of his rights under the Speedy Trial Rules and the effect of his consent.</p> <p>The defendant, upon being released on his own recognizance, was directed by the Court pursuant to Sec. 510.40 of the CPL.</p>				

Date	Court Action	3	Adj. Request	Present	Absent	Notify	Excuse
Part			People	Officer	Officer	Officer	Officer
Reporter			Defense	Complainant	Complainant	Complainant	Complainant
Judge			Consent	Defendant	Defendant	Defendant	Defendant
			Court	Attorney	Attorney	Attorney	Attorney
Reason for Adjournment			<p>82-45 9/7</p> <p>Def's consent per AOA</p>				
Bail Condition			<p>SPEEDY TRIAL</p> <p>Adjournment period to be excluded under 30.30 CPL</p> <p>Adjournment period to be charged under 30.30 CPL</p> <p>The defendant, being without counsel, consents to this adjournment after having been advised of his rights under the Speedy Trial Rules and the effect of his consent.</p> <p>The defendant, upon being released on his own recognizance, was directed by the Court pursuant to Sec. 510.40 of the CPL.</p>				

Date	Court Action	4	Adj. Request	Present	Absent	Notify	Excuse
Part			People	Officer	Officer	Officer	Officer
Reporter			Defense	Complainant	Complainant	Complainant	Complainant
Judge			Consent	Defendant	Defendant	Defendant	Defendant
			Court	Attorney	Attorney	Attorney	Attorney
Reason for Adjournment							
Bail Condition			<p>SPEEDY TRIAL</p> <p>Adjournment period to be excluded under 30.30 CPL</p> <p>Adjournment period to be charged under 30.30 CPL</p> <p>The defendant, being without counsel, consents to this adjournment after having been advised of his rights under the Speedy Trial Rules and the effect of his consent.</p> <p>The defendant, upon being released on his own recognizance, was directed by the Court pursuant to Sec. 510.40 of the CPL.</p>				

PEOPLE VS Dominick Florio COUNTY OF ^  
INDICTMENT NO. 6115-98  
N.Y.S.I.D. NO. \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_ SEX \_\_\_\_\_  
ADDRESS \_\_\_\_\_

NOTICE OF APPEARANCE \_\_\_\_\_ 19\_\_\_\_

FILED BY \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

RET ☐ L.A. ☐ 18B ☐

SUBSTITUTION \_\_\_\_\_ 19\_\_\_\_

FILED BY \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE \_\_\_\_\_

RET ☐ L.A. ☐ 18B ☐

ARRAIGNMENT PART 70 SEP - 1 1999 19\_\_\_\_

PLEA NOT GUILTY

JUSTICE HON. JOHN CATALDO

COUNSEL PRESENT Robert J. ...

ADA PRESENT ...

COURT REPORTER ...

INTERPRETER ...

COURT CLERK ...

ARTICLE 730 EXAMINATION

ORDERED \_\_\_\_\_ 19\_\_\_\_

JUSTICE \_\_\_\_\_

COURT CLERK \_\_\_\_\_

COURT REPORTER \_\_\_\_\_

ORDERED \_\_\_\_\_ 19\_\_\_\_

JUSTICE \_\_\_\_\_

COURT CLERK \_\_\_\_\_

COURT REPORTER \_\_\_\_\_

RECOGNIZANCE

ROR \_\_\_\_\_ 19\_\_\_\_

BAIL FIXED \_\_\_\_\_

AMOUNT \_\_\_\_\_

COURT CLERK \_\_\_\_\_

COUNSEL PRESENT \_\_\_\_\_ JUSTICE

ON CONSENT OF ADA \_\_\_\_\_

COURT REPORTER \_\_\_\_\_

BAILED \_\_\_\_\_ 19\_\_\_\_ \$ \_\_\_\_\_

SURETY \_\_\_\_\_

COURT CLERK \_\_\_\_\_

~~POP REVOKED~~ BW PART 70 AUG 31 1999

JUSTICE HON. JOHN CATALDO DE ...

BAIL FOR - BW \_\_\_\_\_ 19\_\_\_\_

JUSTICE \_\_\_\_\_

BAIL EXONERATED \_\_\_\_\_

JUSTICE \_\_\_\_\_

SURR. BY SURETY \_\_\_\_\_ 19\_\_\_\_

SUBSEQUENT ACTION RE RECOGNIZANCE

PART PART 70 SEP 01 1999 19\_\_\_\_

Invol Row - WV

JUSTICE HON. JOHN CATALDO

ADA PRESENT \_\_\_\_\_

COUNSEL PRESENT \_\_\_\_\_

COURT REPORTER E. Taylor

COURT CLERK M. ...

PART PART 82 SEP 15 1999 19\_\_\_\_

BAIL BOND EXONERATED.

New Bail set - \$100,000.00 Co

JUSTICE HON. CHARLES SOLOMON Or

ADA PRESENT BOG DANOS

T. ...

MOTIONS

TYPE: Ombuds 10-12 19 99  
COURT CLERK ROBERT P. CONNOLLY  
ASSOCIATE COURT CLERK  
MOTION BY: DEFENSE — PEOPLE — COURT  
PEOPLE — DEFENSE CONSENT — OPPOSE  
DETERMINED PART-82 NOV - 9 1999 19  
JUSTICE HON. CHARLES SOLOMON  
DETERMINATION G.J. MIN. SUFF.  
H. W. Garber

TYPE: \_\_\_\_\_  
COURT CLERK \_\_\_\_\_  
MOTION BY: DEFENSE — PEOPLE — COURT  
PEOPLE — DEFENSE CONSENT — OPPOSE  
DETERMINED \_\_\_\_\_ 19  
JUSTICE \_\_\_\_\_  
DETERMINATION \_\_\_\_\_

TYPE: \_\_\_\_\_ 19  
COURT CLERK \_\_\_\_\_  
MOTION BY: DEFENSE — PEOPLE — COURT  
PEOPLE — DEFENSE CONSENT — OPPOSE  
DETERMINED \_\_\_\_\_ 19  
JUSTICE \_\_\_\_\_  
DETERMINATION \_\_\_\_\_

HEARINGS

TYPE Hunt-Wade PART-82 FEB - 9 2000  
JUSTICE HON. CHARLES SOLOMON  
ADA PRESENT Bogdanos  
COUNSEL PRESENT Ross  
COURT REPORTER DENISE HUNTINGTON  
INTERPRETER SENIOR COURT REPORTER  
DATE COMMENCED PART-82 FEB - 9 2000  
DATE COMPLETED PART-82 FEB - 9 2000  
DECISION \_\_\_\_\_

COURT CLERK ROBERT P. CONNOLLY  
ASSOCIATE COURT CLERK  
DAILY COPY ☐  
TT0 DET-PATRICIA MCGOVERN TT0 DET VINCENT COO

TYPE SANDOVAL 2/2/19 20  
JUSTICE HON. C. SOLOMON  
ADA PRESENT M. Bogdanos  
COUNSEL PRESENT C. Ross  
COURT REPORTER D. Huntington  
INTERPRETER \_\_\_\_\_  
DATE COMMENCED 2/10/2000 19  
DATE COMPLETED 2/10/2000 19  
DECISION See Minutes 2/14/2000

COURT CLERK R. Montemagno  
DAILY COPY ☐

TYPE \_\_\_\_\_ 19  
JUSTICE \_\_\_\_\_  
ADA PRESENT \_\_\_\_\_  
COUNSEL PRESENT \_\_\_\_\_  
COURT REPORTER \_\_\_\_\_  
INTERPRETER \_\_\_\_\_  
DATE COMMENCED \_\_\_\_\_ 19  
DATE COMPLETED \_\_\_\_\_ 19  
DECISION \_\_\_\_\_ 19

COURT CLERK \_\_\_\_\_  
DAILY COPY ☐



SENIOR COURT-1 OFFER

Jury Panel of 9 entered + sworn  
 Judge's Preliminary Instructions to Panel  
 Voir Dire begins  
 Jurors 1-12 + 4 alternates selected + sworn

PART-82 FEB 18 2000 DENISE HUNTINGTON  
 SENIOR COURT REPORTER  
 ANN BOGIER OCR

Judge's Preliminary Instructions  
 People's Opening Statement  
 Defense Opening Statement

Andrew BROWN - Bklyn Resident  
 Direct Examination  
 Cross Examination  
 Re-Direct

Glenn XAVIER - Connecticut Resident  
 Direct Examination  
 Cross Examination

George GREEN - Complainant  
 Direct Examination  
 Cross Examination  
 Re-Direct

Ilse SINGER - NY County Resident  
 Direct Examination  
 Cross Examination  
 Re-Direct  
 Re-Cross

Eleutorio TURKELL - Bx Resident  
 Direct Examination  
 Cross Examination

PART-82 FEB 17 2000  
 DENISE HUNTINGTON + ANN BOGIER OCR  
 SENIOR COURT REPORTER

11(6) EFRAIN CARABELLO Nycountry  
 Direct - Cross - Re-Direct  
 11(7) P.O. CHRISTOPHER JACOBELLIS - NYPD 6342

11(8) DET. PATRICIA MCGOVERN NYPD #522

Direct - Cross  
 Change Conference

PART-82 FEB 18 2000 DENISE HUNTINGTON  
 SENIOR COURT REPORTER  
 ANN BOGIER OCR

Assumption 11 Summation  
 Judge's Charge to Jury  
 Deliberation  
 Verdict

APPEALS

APPELLATE DIVISION

NOTICE OF APPEAL FILED \_\_\_\_\_ 19\_\_

BAIL PENDING APPEAL \_\_\_\_\_ \$ \_\_\_\_\_

JUSTICE \_\_\_\_\_ DATE \_\_\_\_\_

BAILED \_\_\_\_\_ 19\_\_ \$ \_\_\_\_\_

SURETY \_\_\_\_\_

DISPOSITION

PLEA

JUSTICE

PART 19

DEFENDANT PLEADS GUILTY

BEFORE)

DURING)

TRIAL TO

COURT CLERK

DA CONSENTING

COUNSEL PRESENT

COURT REPORTER

INTERPRETER

TRIAL

COMMENCED

PART-82 FEB 14 2000

PART

JUSTICE

HON. CHARLES SOLOMON

DA PRESENT

Bogdanos

COUNSEL PRESENT

Ross, Mure

COURT REPORTERS

DENISE HUNTINGTON

SENIOR COURT REPORTER

ROGER P. CONNOLLY

COURT CLERK ASSOCIATE COURT CLERK

INTERPRETER

ONCLUDED

RIED AND FOUND NOT GUILTY ☐

RIED AND FOUND GUILTY ☒

OF

ASSAULT 1° (CTA) 120.10 (1)

FNG (CTS 1,3)

SENTENCE

PART

PART-82 APR 12 2000

19

COUNSEL PRESENT

Ross/Mure

ADA PRESENT

Bogdanos

COURT REPORTER

ERIC ALLEN

RR. COURT REPORTER

INTERPRETER

SECTION 380.50 C.P.L. COMPLIED WITH ☒

COURT CLERK

ROGER P. CONNOLLY

ASSOCIATE COURT CLERK

SENTENCED

15 YEARS NYSDC

\$150.00 MANDATORY

SURCHARGE IMPOSED.

\$5.00 CVAF IMPOSED.

DEFENDANT GIVEN WRITTEN NOTICE OF HIS  
RIGHT TO APPEAL ☒

JUSTICE OF SUPREME COURT  
HON. CHARLES SOLOMON

RECEIVED  
MOTIONS UNIT

Dominick Florio

2009 MAR 15 AM 11:15, 2009

Din # 00A5699

DISTRICT ATTORNEY  
NEW YORK COUNTY

Collins, Corr. Fac.

PO Box 340

Collins, NY 14034

Honorable Charles Solomon

Supreme Court of the State of New York

100 Centre Street

New York N.Y. 10013

Re: People V. Florio Ind. NO. 6115/99 (Requesting to Amend  
Renewal motion dated January 21, 2009, With additional Supporting  
evidence. N.Y.C.R.R. 222.1.9


Honorable Solomon,

Please be advised I am making a request to amend my motion to  
Renewal, with additional Supporting evidence. Defendant received this evidence  
on February 2, 2009. From attorney Joseph Mure, 26 Court Street Brooklyn N.Y.  
11242. This evidence Supports my Claim on the Renewal motion. That there  
was no conversation on February 7, 2000 about Counsel Considered and  
then decided against raising any psychiatric defense by defense attorney  
Charles Ross and Joseph Mure. Mr. Mure did not have the opportunity to  
review the defendant medical record. See (exhibit A Inclose Amending  
Renewal motion). Mr Ross never provided these records, and do to your denied request  
to prepare for trial (See exhibit A) District Attorney Matthew Bogdanos clearly  
submitted false perjured testimony on there, (Summary of Facts 5. Memorandum  
of law in response to defendant's C.P.L. 440.10 date Oct. 3, 2008). (See motion to  
Renew P.S. line 10) In Violation of DR-7-102 (A)(4)(5)(8) DR-7-102 (B) (2).  
Carriage House Realty Co. V. Conlon. 1985. 493 NYS2d 687 (Weaver V. State 1985.  
493 NYS2d 687)


Do to the timing this defendant received this new Supporting affidavit. The defendant would like the Court to amend defendant's motion to Renew with Mr. Mure affidavit in Support of defendants motion to: Renew C.P.L.R. 2221:4 on January 21, 2009 (Ulster Sav. V. Goldman, 800 NYS2d 170) (Weitzeberg V. Nassau 2. Dept 2008. 862 NYS2d 556).

WHEREFORE, it is respectfully requested that this Courts decision and order dated December, 23, 2008. Stamp on January 9, 2009, then sent to the defendant above. Denying defendants motion pursuant to Vacate. C.P.L. 440.10 Should reversed on the law. This defendant clearly proves with the inclosed affidavits and on his motion to Renew. This Court based there decision on false perjured testimony, to say the least. (See Renew motion P. 7 (14)) Therefore this Court Should Vacate their prior decision remit the matter for a hearing. in the alternative the Court Should reverse the judgement of conviction and order a new trial.

Sworn to before me

Respectfully Submitted  
  
Dominick Florio

This 9th day of February 2009

  
NOTARY PUBLIC

DANIEL J. DAREL  
NOTARY PUBLIC, STATE OF NEW YORK  
CERTIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 10/29/12  
REGISTRATION NO. 01DA6194226

EXHIBIT, A



JOSEPH MURE JR. & ASSOCIATES

26 Court Street • Suite 2810 • Brooklyn, NY 11242

718.852.9100

joemurejr@aol.com

January 20, 2009

Dominick Florio  
Eastern NY Correctional Facility  
P.O. Box 338  
Napanoch, New York 11258

**RE: People v. Florio**  
**Indictment No. 6115/99**

Dear Mr. Florio,

As you are aware, I was one of the attorneys retained to represent you in your Attempted Murder trial before the Hon. Charles Solomon in Part 82 of New York County.

Your initial attorney of record was Chuck Ross.

When I joined your defense team, the day before your trial was scheduled to commence, it appeared that yourself and Mr. Ross were having difficulty communicating with one another.

Upon being formally retained, we requested an adjournment for purposes of my being provided adequate opportunity to bring myself up to date regarding the specifics of your case in furtherance of our objective that I play a significant role alongside Mr. Ross in your defense. Judge Solomon denied this request.

Inasmuch as I was not provided sufficient time to act in the role of lead counsel, Mr. Ross maintained that role throughout the trial. I reviewed evidence on your behalf and attempted to assist Mr. Ross as his second to the best of my abilities given the circumstances. I did not interview any witnesses at the trial nor was I provided the opportunity to review your medical records.



JOSEPH MURE JR. & ASSOCIATES

26 Court Street • Suite 2810 • Brooklyn, NY 11242

718.852.9100

joemurejr@aol.com

My role was thus very limited to assisting in the formulation of a trial strategy and acting as an intermediary between yourself and Mr. Ross given the apparent breakdown in your respective lines of communication.

I thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish.

Joseph Mure, Jr., Esq.

# APPENDIX. C



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 82

-----X  
THE PEOPLE OF THE STATE OF NEW YORK, : **DECISION AND ORDER**  
: **INDICTMENT 6115-99**  
-against- :  
:   
DOMINICK FLORIO, DEFENDANT :  
-----X  
CHARLES H. SOLOMON, J.:

In a *pro se* application filed April 25, 2008, defendant has moved to vacate the judgment of conviction in the above entitled case under CPL 440.10. Defendant argues that the conviction should be vacated because ~~he~~ he did not receive effective assistance of counsel. Specifically, defendant alleges that his attorney failed to investigate and present evidence of his mental disease or defect, which would have shown that he did not appreciate the nature and consequences of his actions. Defendant claims that his attorney's failure to request that the Court charge the jury on the issue of intoxication was ineffective assistance, as such charge would have caused the jury to entertain doubt regarding the element of intent. Defendant also contends that his attorney failed to produce evidence which could have been used to impeach complainant's testimony at trial. Finally, defendant claims that he was denied due process as a result of his attorney's mistakes. The People oppose defendant's motion in a response filed October 6, 2008. Defendant filed a reply to the People's response on October 21, 2008. For the reasons set forth below, defendant's motion is denied in its entirety.

On February 17, 1999, at approximately (3:00 a.m.) defendant and complainant George Greene were both at Club Om on West 22<sup>nd</sup> Street. Defendant maintains that, as Greene approached the bar, he abruptly bumped into defendant, used offensive language toward him and did not apologize. He claims that Greene tried to irritate and intimidate him by grabbing defendant by the neck. In response, defendant cursed back at Greene. Defendant claims that Greene then reached toward his waist area as though he intended to pull out a weapon. Defendant fearing for his safety, he picked up a bottle of champagne and "propelled a single blow to the top of Mr. Green's [sic] head causing him to fall to the floor." Defendant attempted to leave the club but, at the behest of the bartender, a security guard stopped him, requested identification and copied it before permitting defendant to leave. The force of the impact fractured Greene's skull. He suffered a right temporal contusion which, during his lengthy hospitalization, required surgery and the insertion of two plates in his head to replace a portion of his skull.

Defendant was indicted and charged with an Attempted Murder in the Second Degree [Penal Law §110/125.25(1)] and two counts of Assault in the First Degree [Penal Law §§120.10(1) and 120.10(3)]. Following a jury trial in which he put forth the affirmative defense of justification, defendant was acquitted of Attempted Murder in the Second Degree and Assault in the First Degree under the theory of depraved indifference. With respect to count two of the indictment, Assault in the First Degree, under the theory

that defendant intentionally caused serious physical injury to another by means of a deadly weapon or dangerous instrument, defendant's claim of self-defense was rejected by the jury and he was convicted. On April 12, 2000, defendant was sentenced to a determinate term of imprisonment of fifteen years. Defendant appealed and, on September 24, 2002, his conviction was affirmed. People v. Florio, 297 AD2d 612 (1<sup>st</sup> Dept 2002), *lv denied* 100 NY2d 594 (2003).

Defendant now files a motion pursuant to CPL 440.10, challenging the trial decisions made by lead counsel. Defendant argues that the self-defense strategy pursued by counsel was "doomed to failure" from its inception. He states that counsel should have presented the affirmative defense of lack of responsibility by reason of mental disease or defect. Defendant also believes that counsel should have argued that defendant was so intoxicated on the night of the assault that he was unable to form the intent necessary to commit the crime. Further, he criticizes the cross-examination of the complainant, stating that counsel failed to impeach him.

In support of his motion, defendant offers the results of a neuropsychological report from February, 2000. The report reveals defendant's below average I.Q. and concludes that defendant suffers from chronic impulse control disorder, exacerbated by a 1997 head trauma. Defendant claims that drinking alcohol on the night of the assault further intensified his condition. Defendant also provides records generated after his incarceration in which he was diagnosed as bipolar. Defendant argues that his attorney should have submitted the February 2000 report to the court and called an expert to prove that he suffers from a mental disease or defect.

Defendant also claims that he was too intoxicated to form the necessary intent to commit the crime of assault. He states that he used to be addicted to Vicodin, had been drinking for an hour and a half and had just ordered his third bottle of champagne when the assault occurred. Defendant first argues that his attorney was ineffective based on his "inaction" when the court refused to charge the jury on intoxication and later argues that he was ineffective for failing to request the charge. Defendant states that his attorney "should have unequivocally resorted to other strategically and more advantageous trial tactics . . . ."

Defendant revisits his self-defense claim arguing that counsel should have elicited testimony regarding complainant's actions at the time of the incident which, he states, instigated this assault. He argues that his perception at the time of the assault, however inaccurate, was reasonable in view of his extreme emotional disturbance and mental disease. Defendant also claims that counsel's inability to impeach the complainant constitutes ineffective assistance of counsel.

The People argue that defendant's motion is baseless and must be dismissed because it raises issues that should have been argued on direct appeal. They argue that, should the court entertain the motion, defense counsel's representation was meaningful

and defendant was not deprived of a fair trial. The People state that defendant's motion is factually inaccurate and legally unsupportable.

The People submit that defendant's attorney provided competent representation throughout motion practice, plea negotiations and trial. They argue that any probative value that defendant's psychological and medical records might have had for the jury would have been greatly outweighed by the devastating effect of having a psychologist cross-examined about the defendant's prior violent criminal history. The People argue that defendant's attorney was, in fact, so effective that he won an acquittal on the top count of the indictment, attempted murder. They argue that the evidence of defendant's intoxication was presented to the jury through defendant's own testimony. The People state that the jury simply did not credit defendant's testimony regarding his claim of self-defense. The People submit that defendant has failed to meet his burden to demonstrate ineffective assistance of counsel.

The law in the area of ineffective assistance of counsel is clear. Under the United States Supreme Court decision in Strickland v. Washington, 466 US 668, 686-687 (1984), in order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his attorney's performance was deficient and that this deficiency prejudiced the defense. Under the Strickland test, a defendant must demonstrate that there is a "reasonable probability" that, but for counsel's unprofessional errors, the result of the proceeding would have been different. In New York, under our Court of Appeals decisions, the standard is somewhat different. The New York definition of ineffective assistance of counsel is referred to as the Baldi test. New York holds that "[s]o long as the evidence, the law and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met." People v. Baldi, 54 NY2d 137, 147 (1981); see also People v. Ozuna, 7 NY3d 913 (2006); People v. Caban, 5 NY3d 143, 152 (2005). Under either standard, defendant's claim must fail.

The concept of ineffective assistance of counsel has never been subject to a precise definition. Yet, in analyzing a claim of ineffective assistance of counsel, certain well established principles must be kept in mind. Disagreement with an attorney's tactics or strategies is not the test of ineffectiveness. People v. Flores, 84 NY2d 184, 187 (1994). As our Court of Appeals has held, "[a]s long as the defense reflects a reasonable and legitimate strategy under the circumstances and evidence presented, even if unsuccessful, it will not fall to the level of ineffective assistance." People v. Benevento, 91 NY2d 708, 713 (1998).

Throughout his motion, defendant admits that the basis for his ineffective assistance of counsel claim is his belief, in hindsight, that his self-defense claim was a losing trial strategy. He states that the more "plausible" line of defense would have been that he was not responsible by reason of mental disease or defect or, due to intoxication, he lacked the ability to form the intent to commit an assault. As noted by the People, defendant ignores that his attorney managed to win an acquittal on the top count of the indictment, attempted murder.

"[T]rial tactics which terminate unsuccessfully do not automatically indicate ineffectiveness." People v. Baldi, *supra*, at 146-147. Defendant was afforded vigorous representation that resulted in his acquittal on the top charge of the indictment. Counsel pursued a plausible strategy in putting forth a self-defense claim. Here, "the evidence, the law and the circumstances . . . viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation . . ." *Id.* Thus, defendant received effective assistance of counsel and was afforded due process under both the Federal and State constitutions.

CPL 440.10(2)(c) states, in pertinent part, that the court must deny a motion to vacate a judgment when "[a]lthough sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's . . . unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him."

Defendant appealed the judgment of conviction on the issues of credibility, the sufficiency of the evidence, the trial court's charge on "initial aggressor" and prosecutorial misconduct. None of these claims were credited by the Appellate Division. People v. Florio, *supra*.

Defendant did not raise the issue of ineffective assistance of counsel on his direct appeal and he is procedurally barred from collaterally attacking his conviction in a motion pursuant to CPL 440.10. People v. Pedraza, 56 AD3d 390 (1<sup>st</sup> Dept 2008). To the extent that defendant complains about matters outside the record, his motion is deficient in that it offers only his own self-serving, after-the-fact affidavit and does not include an affidavit from trial counsel. *See*, People v. Rogers, 8AD3d 888 (3<sup>d</sup> Dept 2004). Additionally, defendant does not offer any explanation for his failure to include such affidavit. People v. Morales, 58 NY2d 1008 (1983); People v. Stewart, 295 AD2d 249 (1<sup>st</sup> Dept 2002), *lv denied* 99 NY2d 540, *cert denied* 538 US 1003.

Based on a complete review of the record in this case, it is clear that defendant received meaningful representation, People v. Baldi, *supra*. Additionally, defendant has failed to meet his burden to demonstrate that matters outside the record require the conviction to be vacated. For the above stated reasons, defendant's motion to vacate the judgment of conviction is denied.

This opinion constitutes the decision and order of the Court.

Dated: December 23, 2008  
New York, New York

DATE: JAN. 09 2009  
I hereby certify that the foregoing is a true copy of the original as presented to me by the clerk of the court.

  
CHARLES H. SOLOMON, J.S.C.

# APPENDIX, D

SUPREME COURT  
CRIMINAL TERM

NEW YORK COUNTY  
PART 82

THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT #  
: 6115/99

-against-

DOMINICK FLORIO,

Defendant.

: CHARGE:  
: ATTEMPTED  
: MURDER 2

: CALENDAR CALL

111 Centre Street  
New York, N.Y. 10013  
February 7, 2000,

B E F O R E:

HONORABLE CHARLES SOLOMON,  
JUSTICE OF THE SUPREME COURT

A P P E A R A N C E S:

ROBERT M. MORGENTHAU, ESQ.,  
New York County District Attorney  
BY: MATTHEW BOGDANOS, ESQ.,  
Assistant District Attorney  
(For the People)

BRAFMAN & ROSS, PC  
767 Third Avenue  
New York, NY 10017  
BY: CHARLES A. ROSS, ESQ.,  
ANDREA ZELLAN, ESQ.,

ALSO PRESENT:  
JOSEPH MURE, ESQ.

(For the Defendant Florio)

Denise M. Huntington, RPR, CSR  
Senior Court Reporter

Denise M. Huntington, RPR, CSR  
Senior Court Reporter

## Proceedings

COURT CLERK: Calendar No. 8,  
Dominick Florio.

THE COURT: Appearances, please.

MR. ROSS: Charles A. Ross, and  
Andrea Zellan, Brafman & Ross,  
767 Third Avenue, New York, New York, for  
Mr. Florio.

MR. MURE: Joseph Mure, 26 Court Street,  
Brooklyn, New York.

MR. BOGDANOS: Matthew Bogdanos for the  
People.

THE COURT: Counsel?

MR. ROSS: Yes, sir.

THE COURT: The case is on today for  
hearings. I've previously granted a Huntley  
and Wade hearing.

We had talked, I know, many times in the  
past about having a hearing this week.

MR. ROSS: Yes.

THE COURT: It was supposed to be  
Wednesday afternoon and we had adjourned it  
to today, just for everyone's schedule, mine  
and everyone else's.

You are telling me now you are asking

## Proceedings

for an adjournment, as you told me at the bench with Mr. Mure and Mr. Bogdanos present.

MR. ROSS: Yes sir, I did. We asked, at the bench, and let me state for the record the reasons why I am requesting this adjournment.

This past Friday I visited my client at Rikers Island, and among other things, my client stated to me that if it wasn't for his family, I would be off the case. We had a very heated discussion over this. He, at various times, called me stupid, and berated me for not conducting appropriate investigations, or getting him a defense that was worthy of this trial.

In fact, insofar as the family is concerned, there is one member of the family who has been supportive of my continued involvement in the case. Another member of the family, as of Friday, was equally hostile to my continued presence as primary trial counsel to Mr. Florio.

Mr. Joseph Mure and I have had conversations last Friday, over the weekend.

Denise M. Huntington, RPR, CSR  
Senior Court Reporter



## Proceedings

1  
2 and most recently, yesterday, and he's in  
3 court today. It's my understanding that the  
4 family is comfortable with him, and that is  
5 true of Mr. Florio, as well. We, in fact,  
6 jointly met with Mr. Florio this morning, and  
7 it was my considered opinion that the  
8 attorney/client relationship that existed  
9 between Mr. Mure and Mr. Florio, was  
10 certainly a more solid one than that which I  
11 have, at this point, with Mr. Florio.

12 With all that said, certainly today, for  
13 me to do the hearing, with my impression of  
14 how my relationship with Mr. Florio stands,  
15 would, in my judgment, be counter to what he  
16 has said to me about my continued presence in  
17 the case. I don't represent the family, I  
18 represent Mr. Florio.

19 Now, I understand this is an eleventh  
20 hour sort of situation, here, but what I'm  
21 hopeful of trying to do is to resolve the  
22 issue of representation over the next two  
23 days, and to discuss with Mr. Florio, in some  
24 more detail, what he wishes to do here, in  
25 light of my assessment of the kind of

Denise M. Huntington, RPR, CSR  
Senior Court Reporter

## Proceedings

evidence that Mr. Bogdanos will bring in.

He has turned over to me all of the Rosario material, all of the grand jury material, all the DD5's, and I have had an opportunity to review them in great depth, and I've shared my perceptions of them with Mr. Florio, with Mr. Mure's involvement.

Given that he has a long-standing relationship with Mr. Florio, perhaps your Honor could see your way clear to giving us 48 hours to try to resolve this and come back here, one way or the other, to come in here on Wednesday afternoon and be prepared to proceed with the hearing.

That might be the best course of action under these circumstance.

THE COURT: Let me see if I understand correctly. You are saying, as far as I understand, and I am going to ask Mr. Mure a couple of questions on the record in a second, but Mr. Ross, as far as you are concerned, your are consenting to an adjournment, or asking for an adjournment until Wednesday to be the hearing?

## Proceedings

MR. ROSS: I am, as it stands today, judge.

THE COURT: Because the People are ready. The detective is here.

MR. ROSS: I understand that, and I have spent my weekend preparing for this hearing in the event that your Honor were to direct me to proceed with the hearing, I can do that today.

I am just stating to your Honor that were I to proceed as counsel for Mr. Florio, it is my impression that he's uncomfortable with that, to the degree that I have a described on the record.

THE COURT: Certainly, where an issue doesn't exist previously, it exists now, and should he be convicted after trial and receive a prison sentence, this is certainly going to be an issue on appeal.

MR. ROSS: I think that's right.

THE COURT: Right, and I don't want that.

If I understand correctly, either you and/or together with Mr. Mure, on Wednesday,

## Proceedings

will be ready to proceed, whoever it is going to be.

MR. ROSS: I'm hopeful that that is true.

Whether or not Wednesday comes around, and I come to your Honor and I say, Judge Solomon, I am asking to be relieved from this case, I am not, at that point, yet.

THE COURT: But Mr. Mure will be ready, then, on Wednesday, that is the point I am making.

I want to just say, this happens quite frequently on the eve of trial.

MR. ROSS: I understand.

THE COURT: At the eve of a hearing the defendant, for whatever reason, hires a new lawyer, or wants a new lawyer. In a lot of cases where someone is hired, I think the understanding is that the person is hired with the understanding he comes in and proceeds.

Mr. Mure will have all of the available information that you have to review. He met, obviously, with the defendant earlier than

## Proceedings

1  
2 today, and he will be ready on Wednesday, as  
3 well.

4 I don't think this is an unreasonable  
5 request I am making to you now. If the  
6 hearing doesn't go forward today, which I am  
7 inclined to grant that application for a  
8 2-day continuance, it will go forward on  
9 Wednesday, and you will resolve the issue of  
10 representation between now and then.

11 MR. ROSS: Yes, sir.

12 THE COURT: Mr. Mure?

13 MR. MURE: Basically, judge, I got  
14 involved in this case based upon numerous  
15 calls from Mr. Florio and his family. It  
16 appears as though when Mr. Florio first got  
17 arrested, there may have been certain things  
18 that were happening inside of his life, where  
19 maybe his mind frame was not effective at  
20 that point.

21 THE COURT: He's been in front of me  
22 since September 7th, right after Labor Day.

23 MR. MURE: Right.

24 THE COURT: Mr. Ross has been here, and  
25 there's never -- I want to emphasize, there's

## Proceedings

1  
2 never been any problem whatsoever with the  
3 attorney/client relationship, none. So it's  
4 somewhat -- and again, I told you at the  
5 bench, it's somewhat coincidental to me, the  
6 day when the detective is here, when the  
7 People are ready, when we are going to  
8 proceed, out of the clear blue, now I hear  
9 this. You understand what I am saying?

10 MR. MURE: I understand exactly.

11 What I am saying, judge, is that I think  
12 there was some sort of communication problem,  
13 and I think Dominick, not knowing Mr. Ross,  
14 maybe held back a lot of information, and I  
15 think it might have been possibly his fault.  
16 I am not saying Mr. Ross did anything wrong,  
17 I am in no way alleging anything like that.  
18 But I am, in fact, saying that I stepped in  
19 here with the understanding that I was going  
20 to try to help the communication between  
21 Mr. Florio and Mr. Ross, and see if there is  
22 any way I can help Mr. Ross handle this case,  
23 itself, since this is a case where maybe  
24 Mr. Florio actually does, in fact, testify.

25 I do know his past, I do know his

## Proceedings

1  
2 background. I have been involved in each one  
3 of those cases, and I feel I can possibly  
4 help Mr. Florio during this case. But I am  
5 not --

6 THE COURT: He is entitled to counsel  
7 of his choice.

8 MR. MURE: Sure, and I am not asking,  
9 judge -- I am not looking to come into this  
10 case and remove Mr. Ross out of the case.  
11 That is not my intention at all.

12 In fact, I clearly stated to Mr. Ross,  
13 he's been paid, he's supposedly handling the  
14 case.

15 THE COURT: I told you at the bench, I  
16 never get involved with the monetary aspects  
17 of all of this. This is between the  
18 defendant and counsel. I don't want to know  
19 about it. I don't want to know the  
20 arrangements of where the money is, where  
21 it's coming from, who is giving what to  
22 whom. I don't want to know that. I am  
23 concerned with him having the lawyer of his  
24 choice.

25 MR. MURE: Yes, and based upon my

## Proceedings

1  
2 conversation with Mr. Florio in the back, it  
3 appears as though he would like Mr. Ross to  
4 try the case, but he would like me to be  
5 involved in the trial.

6 THE COURT: Fine. If it comes to that,  
7 on Wednesday, Mr. Ross, your associate, and  
8 Mr. Mure can all sit at counsel table for,  
9 certainly, the hearing at least, and we will  
10 take it from there.

11 MR. MURE: Thank you, sir.

12 THE COURT: But I think I'm inclined to  
13 give you the adjournment to Wednesday  
14 afternoon, with the understanding that on  
15 Wednesday afternoon the case is going  
16 forward, and this gives you adequate time.

17 You have all the Rosario material.  
18 Mr. Bogdanos, I've heard him say many times,  
19 engages in open file discovery. He will give  
20 you more than you're entitled to, and the  
21 case will proceed on Wednesday.

22 You can talk to Mr. Florio, Mr. Mure,  
23 Mr. Ross, between now and then, as much as  
24 you want, and work all of this out. But  
25 Wednesday, afternoon when we call the case. we



## Proceedings

are going to go forward.

MR. ROSS: That's fine, judge.

Thank you.

THE COURT: Mr. Bogdanos, your detective is available Wednesday?

MR. BOGDANOS: They are indeed available.

THE COURT: There's two witnesses at the hearing?

MR. BOGDANOS: Yes, your Honor.

THE COURT: Do you want them in the courtroom for this, or does it matter to anybody?

MR. ROSS: It doesn't matter.

THE COURT: Fine.

Go ahead.

MR. BOGDANOS: Just to put some things on the record that may not already be on the record, Mr. Mure, who has a prior relationship with Mr. Florio, was at least initially involved in this case, at least at the arraignment time period, and then Mr. Ross became involved. He has, of course, been involved throughout the entire course of

## Proceedings

1  
2 the indictment, while it was proceeding  
3 towards trial.

4 And again, I have the same concerns  
5 your Honor has at the eve of trial. We have  
6 all seen it before, but we should be clear  
7 about one thing, and this isn't on the record  
8 yet. I mean, Mr. Ross is on anyone's short  
9 list of attorneys. You get in trouble, he's  
10 on your short list. This is the guy you want  
11 trying your case in New York County. It  
12 doesn't even, as your Honor said at the  
13 bench, pass the smell test. It is even worse  
14 in passing the smell test because we are  
15 talking Chuck Ross, we are not talking about  
16 someone else. So those are my concerns. So  
17 I don't want your Honor to think that my  
18 silence or willingness to go along with the  
19 delay until Wednesday, in any way, is  
20 construed as believing that this is what it  
21 is.

22 THE COURT: I agree with you, Mr. Ross  
23 is an excellent lawyer.

24 MR. BOGDANOS: So Wednesday, we are  
25 going forward, whether it's with Mr. Ross,

## Proceedings

Mr. Mure, a combination of both, or someone else. We are going forward on Wednesday, picking a jury on Thursday, opening on Monday morning, closing arguments next week at some point, and then the jury will speak.

THE COURT: Absolutely.

Mr. Ross and Mr. Mure, again, that is the schedule we have always contemplated. I want to go forward, then, in saying Wednesday afternoon we will do the hearings. After the hearings on Thursday we will have jury selection. Friday is a court holiday, a legal holiday, and Monday we will have testimony. That is going to be with Mr. Ross, Mr. Mure, both of you, one of you, whatever combination there is.

Excuse me if I don't put your name in there, I'm talking about Mr. Ross and his associate when I say Mr. Ross.

So that is what is going to happen here. I just want that to be clear. I'm granting this adjournment today, really, as a matter of courtesy, as well as it being something I feel I should be in order to have this

## Proceedings

resolved. But Wednesday afternoon we are going to go forward.

Anything else today?

MR. ROSS: May we approach?

THE COURT: You know what, let's talk on the record. I usually like to do that, only because the defendant then has the advantage of hearing my thoughts, everything the lawyers say, everything I say, and so there's no misinterpretation, which sometimes there is, in the defendant thinking that I meant one thing or said one thing. This way, everything is out in the open, on the record.

MR. ROSS: That's fine, judge.

Judge, let me just hand up to the Court a copy, and I will give Mr. Bogdanos a copy as well, of a psychiatric report that we have, not for the purposes of trial, but Mr. Bogdanos and I have discussed the 250.10 issue.

I don't intend to call a psychiatrist if this case does proceed to trial, I do not. However, what I am submitting this for is the purpose of us to consider a possible

Denise M. Huntington, RPR, CSR  
Senior Court Reporter

## Proceedings

resolution of the matter, short of trial.

In essence, what Dr. William Vingiano sets forth in this report is that Mr. Florio suffered a very, very bad car accident, and that that caused some, albeit, not major, but some neurological damage, and has led to a very difficult situation with impulse control.

THE COURT: Well, he is out drinking, in the middle of the night, at the Club Ohm, so I don't know why he is doing that if he has the problem with impulse control. That's not good.

You understand that?

MR. ROSS: I certainly understand that, judge. In fact, I think the other thing that I think I've mentioned to your Honor is that Mr. Florio also had a problem and was detoxed for this when he was first arrested, with prescription painkillers. There was Vicodin that was being taken.

So while this certainly does not excuse very, very serious conduct, what we would ask you to consider is that you have a

## Proceedings

1  
2 young man here with a low I.Q., and I think  
3 that's clear from the battery of tests that  
4 were done. We are not talking about a person  
5 with an I.Q. that's particularly high, here.

6 In addition, some neurological damage  
7 that was as of a result of this car accident,  
8 and obviously, his family is very concerned  
9 about him. This is a very serious, serious  
10 charge that he is facing here.

11 The fact of the matter is that in my  
12 review of the hospital records, the  
13 complainant was badly injured. Today, his  
14 functioning is not impaired by his own  
15 inability to function. I don't think there's  
16 any significant brain damage. I do know that  
17 he does have permanent plates in his head.

18 THE COURT: The notes I made, and I do  
19 this in most cases from the grand jury  
20 testimony, is that he underwent a seven and a  
21 half hour operation for brain surgery, and  
22 has had a fractured skull and two permanent  
23 plates in his head.

24 MR. ROSS: That is true, and that is a  
25 very, very serious injury. But in a serious,

## Proceedings

1  
2 difficult case where, obviously, there could  
3 have been a more difficult situation for the  
4 complainant, he is, thankfully, able to  
5 function at, I believe, a reasonable level  
6 that's not directly impaired, in terms of  
7 brain functioning, by the injury that he  
8 suffered.

9 All of this, I'd suggest, your Honor,  
10 mitigates the very serious charges that are  
11 leveled against Mr. Florio, at this point,  
12 and what I'm asking from your Honor is a  
13 consideration for a plea offer to be  
14 extended.

15 Now, what we have talked about --

16 THE COURT: I don't really think it is  
17 a plea offer, I think it is a sentence offer;  
18 a sentence commitment for me.

19 It is such a wide range from the  
20 minimum, which is 5 years determinate, and  
21 the maximum, which is 25 years. It is a  
22 20-year range.

23 I haven't heard from the DA yet, so I  
24 don't know what the People would recommend,  
25 and I don't know what the defense is seeking.

Denise M. Huntington, RPR, CSR  
Senior Court Reporter

## Proceedings

1  
2 Obviously, you're seeking leniency, but it is  
3 a question of, again, putting all of this  
4 into numbers, which I don't know that I can  
5 do, at this point.

6 MR. ROSS: Yes, I know. We've discussed  
7 that before, your Honor, and we've talked  
8 about the possibilities of some sort of open  
9 resolution, some sort of open plea where we  
10 would bring all of the facts to your Honor's  
11 attention for the day of sentence.

12 I've certainly conveyed that to  
13 Mr. Florio, and if I recall correctly, and if  
14 your Honor's notes indicate something  
15 different, let me know, but my own personal  
16 recollection when your Honor and I talked,  
17 was that your Honor sort of admonished me  
18 that if my client was considering that his  
19 sentence would be in the 6 or 7 year  
20 neighborhood, that that might be overly  
21 optimistic. That is my recollection of what  
22 your Honor's statement to me was.

23 THE COURT: That is my recollection,  
24 too.

25 MR. ROSS: In terms of what the defense